IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

FAO.No.553/2000

Date of Decision :11.9.2006.

Smt.Veena Devi. …Appellant.

Versus:

Chander Kumar ….Responent.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the appellants: Pt.Om Parkash ,Advocate

For Respondent. Mr.Ashutosh Burathoki, Advocate.

Deepak Gupta, J (Oral).

This appeal under Section 28 of the Hindu Marriage Act is directed against the judgment and decree of the learned Additional District Judge (I), Kangra at Dharamsala, whereby he has granted a decree for divorce in favour of the husband.

The facts in brief are that husband-Chander Kumar got married to wife-Veena Devi on 30.1.1992 according to Hindu rites. Admittedly, the parties lived together for only two years and one girl child was born out of the wedlock. According to the husband who is employed as

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

sepoy with the Central Industrial Security Force, whenever he visited his house on annual leave once a year, the wife refused to cohabit with him and discharge her matrimonial duties. According to the husband, the wife had proclaimed before his parents and the public at large that she would not live with the husband. She left the matrimonial home and started living with her parents. The wife denied the allegations and asserted that the husband said that she was dark complexioned and therefore, he does not want to keep her and wants to re-marry.

The husband examined himself in support of this case and also examined two other witnesses. They supported the version set out in the petition for divorce and according to the husband the wife treated him with cruelty by lodging a false criminal case against him at Police Station, Nurpur under Section 498-A and 323 I.P.C. He was kept under detention for seven days in connection with the said criminal case. The version of the husband was also supported by two witnesses, namely PW-2-Tulsi Devi and PW-3-Pritam Chand. Despite repeated opportunities given to her, neither the wife appeared in the witness box nor produced any other evidence on the basis of un-controverted statement of the husband.

I have heard Pt.Om Parkash learned counsel for the appellant-wife as well Shri Ashutosh Burathoki, learned counsel for the husband. It is contended that the evidence of the wife was wrongly closed and at least one more opportunity should have been granted to her for leading evidence. It is also contended that it is not proved that the

wife treated the husband with cruelty. I am unable to accept both these contentions. The wife was granted five opportunities to lead her evidence. The evidence was closed by the order of the Court, and the petition of the husband was decreed. Though, the decree was passed by the trial Court on 30.12.1999, the wife filed an appeal only in August, 2000 which was time barred. Before any orders could be passed in the appeal, the husband re-married on 13.8.2000. In fact, on 14.3.2001 when the parties were present before this Court, it was found that the re-conciliation was not possible since the husband had already contracted second marriage.

As far as the finding on the issue of cruelty is concerned on the basis of the un-controverted evidence of the husband and his witnesses, it cannot be said that the trial Court has erred in giving the said finding. The finding of the trial Court is based on the evidence which calls for no interference.

The appeal is dismissed with no orders as to costs.

(Deepak Gupta),
Judge.

September 11, 2006.
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